

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

MARLIN McCULLER,  
Petitioner,

vs

WARDEN, CHILLICOTHE CORRECTIONAL  
INSTITUTION,  
Respondent.

Case No. 1:08-cv-371

Dlott, J.  
Hogan, M.J.

**REPORT AND  
RECOMMENDATION**

Petitioner, an inmate at the Chillicothe Correctional Institution in Chillicothe, Ohio, filed a *pro se* habeas corpus petition pursuant to 28 U.S.C. § 2254. (*See* Doc. 1).

On June 13, 2008, the Court issued a Show Cause Order directing petitioner to either pay the \$5.00 filing fee or file a motion for leave to proceed without prepayment of fees within thirty (30) days. (Doc. 2). Petitioner was advised that his failure to comply with the Order would result in the dismissal of the action for want of prosecution.

To date, more than thirty days later, petitioner has failed to comply with the Court's Deficiency Order.

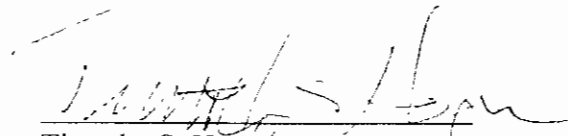
District courts have the inherent power to *sua sponte* dismiss civil actions for want of prosecution to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link v. Wabash R.R.*, 370 U.S. 626, 630-631 (1962). Failure of a party to respond to an order of the court warrants invocation of the Court's inherent power in this federal habeas corpus proceeding. *See* Fed. R. Civ. P. 41(b); *see also* Rule 11, Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254.

It is therefore **RECOMMENDED** that this matter be **DISMISSED** for lack of

prosecution.

Date:

7/13/08  
KI

  
\_\_\_\_\_  
Timothy S. Hogan  
United States Magistrate Judge

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**NOTICE**

Attached hereto is a Report and Recommendation issued by the Honorable Timothy S. Hogan, United States Magistrate Judge, in the above-entitled habeas corpus action. Pursuant to Fed. R. Civ. P. 72(b), which may be applied in this action under Rules 1 and 11 of the Rules Governing Section 2254 Cases in the United States District Courts, 28 U.S.C. foll. § 2254, any party may object to the Magistrate Judge's Report and Recommendation within ten (10) days after being served with a copy thereof. Such party shall file with the Clerk of Court and serve on all other parties written objections to the Report and Recommendation, specifically identifying the portion(s) of the proposed findings, recommendations, or report objected to, together with a memorandum of law setting forth the basis for such objection(s). Any response by an opposing party to the written objections shall be filed within ten (10) days after the opposing party has been served with the objections. *See* Fed. R. Civ. P. 72(b). A party's failure to make objections in accordance with the procedure outlined above may result in a forfeiture of his rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

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 A488-039  
 Chillicothe Corr. Inst.  
 PO Box 5500  
 Chillicothe, OH 45601

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